IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
Appeal No.318 of 2007
In
Notice of Motion No.137 of 2006
In
Suit No.94 of 2006

Girish Vinodchandra Dhruva & Ors. .. Appellants
(Org.Defendants)

Vs.

Neena Paresh Shah & Anr. .. Respondents
(Org.Plaintiffs)

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S/Shri Girish Desai i/b Arvind G.Shah for the appellants.

Shri Vatsal Shah i/b Chetan Mehta for the respondents.

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CORAM : R.M.S.KHANDEPARKAR &
D.G.KARNIK, JJ

DATED : 27TH APRIL, 2007

P.C.

1. Heard. Admit.

2. By consent, heard forthwith. Shri Chetan Mehta waives service for the respondents.

3. The appellants challenge the impugned order dated 20th February, 2007 passed in Notice of Motion No.137 of 2006 in Suit No.94 of 2006 whereby the Learned Single Judge has made the notice of motion

absolute in terms of prayer clause (a). The said prayer clause (a) reads thus:-

> "(a) that pending the hearing and final disposal of the suit, Court Receiver, High Court, Mumbai or any other fit and proper person be appointed as Receiver of the suit flat, more particularly described in Ex - A hereto with all powers under the Code of Civil Procedure 1908 including power to take possession, appoint agents and hand over vacant and peaceful possession thereof to the Plaintiffs and execute such documents as may be necessary for transferring the suit flat in favour of the Plaintiffs."

4. Evidently, the Learned Single Judge has proceeded to appoint Receiver for the suit flat. The suit has been filed for specific performance of the agreement. The agreement was for purchase of the suit flat for a consideration of Rs.41,75,000/- out of which an amount of Rs.2,51,000/- has been paid as an advance and the balance amount of Rs.39,24,000/- was

required to be paid on or before 31st May, 2005. There is dispute between the parties on the point as to who had failed to comply with the obligations under the agreement, however, we are not concerned with the said point, at this stage. Suffice to say that in terms of the directions issued by the Learned Single Judge, the respondents have already deposited Rs.39,24,000/- in the Court, so also the appellants have deposited the sum of Rs.3,00,000/- (Three Lakhs) in the Court pursuant to the order in that regard. In other words, the amount which is payable under the agreement has been deposited in the Court. There is no dispute that the property in dispute is in possession of the appellants. There is no allegation of any waste or damage being caused to the suit property by the appellants so as to warrant appointment of Receiver in the suit property. Indeed, even the impugned order nowhere discloses any allegation about the wastage to the suit property being caused for appointment of Court Receiver. It is merely on account of the fact that the respondents have volunteered to pay the balance amount of the agreement and having been deposited the same in the Court, the Learned Single Judge proceeded to appoint Receiver in the suit flat. It is well settled that the specific performance is not a matter of right and

the various factors are required to be considered before passing a decree in that regard. Undisputedly, the appellants have stated that the appellants will not create any third party right and/or alienate and/or induct any person in the suit flat till disposal of the suit and without leave of the Court during the pendency of the suit. Besides the said statement has been reiterated before us on behalf of the appellants. In view of the said statement and undisputedly the possession of the suit flat has always been with the appellants and there is no case of any wastage and/or damage to the suit flat by the respondents, we find no reason to sustain the order appointing Court Receiver. In this view of the matter, the impugned order appointing the Receiver in relation to the suit flat cannot be sustained and is liable to be set aside. The amount deposited by the parties be invested in any nationalised bank and be kept so invested till disposal of the suit.

5. It is to be noted that it was inquired from the learned advocate for the respondents as to whether the respondents would like to withdraw the amount deposited, the learned advocate for the respondents, on taking instructions, has stated that the amount will be kept invested. It is also the case of the

respondents that in terms of the agreement in case there is delay in delivering the suit flat, then the appellants are liable to pay penalty to the extent of Rs.2,000/- per day. It is further their case that already in the suit the respondents have prayed for the said amount on account of delay in delivering the suit flat. In order to ensure that in case the respondents succeed in the suit they may not be deprived of the fruits of the decree in its real sense, in our considered opinion, it would be appropriate to direct the appellants to furnish security to the satisfaction of the Registrar (O.S.)/ prothonotary and Senior Master, High Court, Mumbai, in the sum of Rs.2,00,000/- (Two Lakhs) towards the claim for damages.

6. In the result, therefore, the appeal succeeds. The impugned order directing the appointment of Receiver in the suit flat is set aside. The amount deposited by both the parties shall be ordered to be invested in any nationalised bank and shall be kept so invested till disposal of the suit. The appellants shall furnish security to the satisfaction of the Registrar (O.S.)/ prothonotary and Senior Master, High Court, Mumbai, in the sum of Rs.2,00,000/- (Two Lakhs) within four weeks from today. The appeal accordingly

stands disposed of with no order as to costs.

(D.G.KARNIK,J) (R.M.S.KHANDEPARKAR, J)